

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IMPLICIT, LLC,

Plaintiff,

v.

NETSCOUT SYSTEMS, INC.,

Defendant.

Civil Action No. 2:18-cv-00053-JRG-RSP
LEAD CASE

JURY TRIAL DEMANDED

v.

SANDVINE CORPORATION,

Defendant.

Civil Action No. 2:18-cv-00054-JRG-RSP
CONSOLIDATED

STIPULATION REGARDING INVALIDITY

Whereas, given Defendants will not put on an invalidity case, Plaintiff Implicit, LLC (“Implicit”) and Defendants NetScout Systems, Inc. (“NetScout”) and Sandvine Corporation (“Sandvine”) (Sandvine and NetScout together being the “Defendants”, and together with Implicit, the “Parties”) hereby stipulate to the following:

- Defendants will not affirmatively offer any argument, testimony, or evidence relating to any alleged prior art referenced in Dr. Jeffay’s invalidity report, including SCOUT (Mosberger), PacketShaper, Decapser, or SPIN/Plexus, or any other invalidity basis (*e.g.*, lack of written description, on sale bar, etc.).
- Defendants will not offer any argument, evidence, or testimony that they do not infringe based upon their products allegedly “practicing the prior art.” Defendants will not compare the functionality of the Accused Products to the functionality in any alleged prior art, including SCOUT (Mosberger), PacketShaper, Decapser, SPIN/Plexus or any other alleged prior art referenced in Dr. Jeffay’s invalidity report.
- Notwithstanding the foregoing, Defendants agree that they will approach the Court if they believe that Implicit has opened the door to allow Defendants to present evidence and argument relating to prior art referenced in Dr. Jeffay’s invalidity

report as further described in the next paragraph. Implicit does not concede that such arguments and evidence should be before the jury and reserves its rights to object to Defendants presenting such arguments and evidence.

- Notwithstanding the foregoing, to the extent that Implicit attempts to generalize the nature of its invention (e.g., flow-based processing and/or application level inspection and/or deep packet inspection), Defendants reserve the right to present testimony, argument, or evidence that such general concepts were known in the art at the time of invention, including through reference to the prior art discussed in Dr. Jeffay's invalidity report. Implicit does not concede that such arguments and evidence should be before the jury and reserves its rights to object to NetScout presenting such arguments and evidence.

Date December 3, 2019

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/s/Brandon C. Martin

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document is being filed electronically on December 3, 2019 in compliance with Local Rule CV-5(a). As such, this document is being served on all counsel, who are deemed to have consented to electronic service. *See* Local Rule CV-5(a)(3)(V).

/s/ Brandon C. Martin
Brandon C. Martin